



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB1364

Introduced 2/9/2007, by Sen. John J. Cullerton

#### SYNOPSIS AS INTRODUCED:

210 ILCS 30/6.2  
720 ILCS 5/26-1

from Ch. 111 1/2, par. 4166.2  
from Ch. 38, par. 26-1

Amends the Abused and Neglected Long Term Care Facility Residents Reporting Act and the Criminal Code of 1961. Provides that any required reporter under the Abused and Neglected Long Term Care Facility Residents Reporting Act who knowingly transmits a false report of abuse or neglect at a State-operated facility or a community agency to the Department of Human Services Office of the Inspector General Hotline commits the offense of disorderly conduct and is guilty of a Class B misdemeanor. Provides that a second or subsequent violation is a Class 4 felony. Effective immediately.

LRB095 04135 DRJ 24173 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Abused and Neglected Long Term Care Facility  
5 Residents Reporting Act is amended by changing Section 6.2 as  
6 follows:

7 (210 ILCS 30/6.2) (from Ch. 111 1/2, par. 4166.2)

8 Sec. 6.2. Inspector General.

9 (a) The Governor shall appoint, and the Senate shall  
10 confirm, an Inspector General. The Inspector General shall be  
11 appointed for a term of 4 years and shall function within the  
12 Department of Human Services and report to the Secretary of  
13 Human Services and the Governor. The Inspector General shall  
14 function independently within the Department of Human Services  
15 with respect to the operations of the office, including the  
16 performance of investigations and issuance of findings and  
17 recommendations. The appropriation for the Office of Inspector  
18 General shall be separate from the overall appropriation for  
19 the Department of Human Services. The Inspector General shall  
20 investigate reports of suspected abuse or neglect (as those  
21 terms are defined in Section 3 of this Act) of patients or  
22 residents in any mental health or developmental disabilities  
23 facility operated by the Department of Human Services and shall

1 have authority to investigate and take immediate action on  
2 reports of abuse or neglect of recipients, whether patients or  
3 residents, in any mental health or developmental disabilities  
4 facility or program that is licensed or certified by the  
5 Department of Human Services (as successor to the Department of  
6 Mental Health and Developmental Disabilities) or that is funded  
7 by the Department of Human Services (as successor to the  
8 Department of Mental Health and Developmental Disabilities)  
9 and is not licensed or certified by any agency of the State. At  
10 the specific, written request of an agency of the State other  
11 than the Department of Human Services (as successor to the  
12 Department of Mental Health and Developmental Disabilities),  
13 the Inspector General may cooperate in investigating reports of  
14 abuse and neglect of persons with mental illness or persons  
15 with developmental disabilities. The Inspector General shall  
16 have no supervision over or involvement in routine,  
17 programmatic, licensure, or certification operations of the  
18 Department of Human Services or any of its funded agencies.

19 The Inspector General shall promulgate rules establishing  
20 minimum requirements for reporting allegations of abuse and  
21 neglect and initiating, conducting, and completing  
22 investigations. The promulgated rules shall clearly set forth  
23 that in instances where 2 or more State agencies could  
24 investigate an allegation of abuse or neglect, the Inspector  
25 General shall not conduct an investigation that is redundant to  
26 an investigation conducted by another State agency. The rules

1 shall establish criteria for determining, based upon the nature  
2 of the allegation, the appropriate method of investigation,  
3 which may include, but need not be limited to, site visits,  
4 telephone contacts, or requests for written responses from  
5 agencies. The rules shall also clarify how the Office of the  
6 Inspector General shall interact with the licensing unit of the  
7 Department of Human Services in investigations of allegations  
8 of abuse or neglect. Any allegations or investigations of  
9 reports made pursuant to this Act shall remain confidential  
10 until a final report is completed. The resident or patient who  
11 allegedly was abused or neglected and his or her legal guardian  
12 shall be informed by the facility or agency of the report of  
13 alleged abuse or neglect. Final reports regarding  
14 unsubstantiated or unfounded allegations shall remain  
15 confidential, except that final reports may be disclosed  
16 pursuant to Section 6 of this Act.

17 For purposes of this Section, "required reporter" means a  
18 person who suspects, witnesses, or is informed of an allegation  
19 of abuse or neglect at a State-operated facility or a community  
20 agency and who is either: (i) a person employed at a  
21 State-operated facility or a community agency on or off site  
22 who is providing or monitoring services to an individual or  
23 individuals or is providing services to the State-operated  
24 facility or the community agency; or (ii) any person or  
25 contractual agent of the Department of Human Services involved  
26 in providing, monitoring, or administering mental health or

1 developmental disability services, including, but not limited  
2 to, payroll personnel, contractors, subcontractors, and  
3 volunteers. A required reporter shall report the allegation of  
4 abuse or neglect, or cause a report to be made, to the Office  
5 of the Inspector General (OIG) Hotline no later than 4 hours  
6 after the initial discovery of the incident of alleged abuse or  
7 neglect. A required reporter as defined in this paragraph who  
8 willfully fails to comply with the reporting requirement is  
9 guilty of a Class A misdemeanor.

10 Any required reporter who knowingly transmits a false  
11 report to the OIG Hotline commits the offense of disorderly  
12 conduct under subdivision (a)(13) of Section 26-1 of the  
13 Criminal Code of 1961. Any required reporter who violates this  
14 provision a second or subsequent time is guilty of a Class 4  
15 felony.

16 For purposes of this Section, "State-operated facility"  
17 means a mental health facility or a developmental disability  
18 facility as defined in Sections 1-114 and 1-107 of the Mental  
19 Health and Developmental Disabilities Code.

20 For purposes of this Section, "community agency" or  
21 "agency" means any community entity or program providing mental  
22 health or developmental disabilities services that is  
23 licensed, certified, or funded by the Department of Human  
24 Services and is not licensed or certified by any other human  
25 services agency of the State (for example, the Department of  
26 Public Health, the Department of Children and Family Services,

1 or the Department of Healthcare and Family Services).

2 When the Office of the Inspector General has substantiated  
3 a case of abuse or neglect, the Inspector General shall include  
4 in the final report any mitigating or aggravating circumstances  
5 that were identified during the investigation. Upon  
6 determination that a report of neglect is substantiated, the  
7 Inspector General shall then determine whether such neglect  
8 rises to the level of egregious neglect.

9 (b) The Inspector General shall, within 24 hours after  
10 determining that a reported allegation of suspected abuse or  
11 neglect indicates that any possible criminal act has been  
12 committed or that special expertise is required in the  
13 investigation, immediately notify the Department of State  
14 Police or the appropriate law enforcement entity. The  
15 Department of State Police shall investigate any report from a  
16 State-operated facility indicating a possible murder, rape, or  
17 other felony. All investigations conducted by the Inspector  
18 General shall be conducted in a manner designed to ensure the  
19 preservation of evidence for possible use in a criminal  
20 prosecution.

21 (b-5) The Inspector General shall make a determination to  
22 accept or reject a preliminary report of the investigation of  
23 alleged abuse or neglect based on established investigative  
24 procedures. Notice of the Inspector General's determination  
25 must be given to the person who claims to be the victim of the  
26 abuse or neglect, to the person or persons alleged to have been

1 responsible for abuse or neglect, and to the facility or  
2 agency. The facility or agency or the person or persons alleged  
3 to have been responsible for the abuse or neglect and the  
4 person who claims to be the victim of the abuse or neglect may  
5 request clarification or reconsideration based on additional  
6 information. For cases where the allegation of abuse or neglect  
7 is substantiated, the Inspector General shall require the  
8 facility or agency to submit a written response. The written  
9 response from a facility or agency shall address in a concise  
10 and reasoned manner the actions that the agency or facility  
11 will take or has taken to protect the resident or patient from  
12 abuse or neglect, prevent reoccurrences, and eliminate  
13 problems identified and shall include implementation and  
14 completion dates for all such action.

15 (c) The Inspector General shall, within 10 calendar days  
16 after the transmittal date of a completed investigation where  
17 abuse or neglect is substantiated or administrative action is  
18 recommended, provide a complete report on the case to the  
19 Secretary of Human Services and to the agency in which the  
20 abuse or neglect is alleged to have happened. The complete  
21 report shall include a written response from the agency or  
22 facility operated by the State to the Inspector General that  
23 addresses in a concise and reasoned manner the actions that the  
24 agency or facility will take or has taken to protect the  
25 resident or patient from abuse or neglect, prevent  
26 reoccurrences, and eliminate problems identified and shall

1 include implementation and completion dates for all such  
2 action. The Secretary of Human Services shall accept or reject  
3 the response and establish how the Department will determine  
4 whether the facility or program followed the approved response.  
5 The Secretary may require Department personnel to visit the  
6 facility or agency for training, technical assistance,  
7 programmatic, licensure, or certification purposes.  
8 Administrative action, including sanctions, may be applied  
9 should the Secretary reject the response or should the facility  
10 or agency fail to follow the approved response. Within 30 days  
11 after the Secretary has approved a response, the facility or  
12 agency making the response shall provide an implementation  
13 report to the Inspector General on the status of the corrective  
14 action implemented. Within 60 days after the Secretary has  
15 approved the response, the facility or agency shall send notice  
16 of the completion of the corrective action or shall send an  
17 updated implementation report. The facility or agency shall  
18 continue sending updated implementation reports every 60 days  
19 until the facility or agency sends a notice of the completion  
20 of the corrective action. The Inspector General shall review  
21 any implementation plan that takes more than 120 days. The  
22 Inspector General shall monitor compliance through a random  
23 review of completed corrective actions. This monitoring may  
24 include, but need not be limited to, site visits, telephone  
25 contacts, or requests for written documentation from the  
26 facility or agency to determine whether the facility or agency

1 is in compliance with the approved response. The facility or  
2 agency shall inform the resident or patient and the legal  
3 guardian whether the reported allegation was substantiated,  
4 unsubstantiated, or unfounded. There shall be an appeals  
5 process for any person or agency that is subject to any action  
6 based on a recommendation or recommendations.

7 (d) The Inspector General may recommend to the Departments  
8 of Public Health and Human Services sanctions to be imposed  
9 against mental health and developmental disabilities  
10 facilities under the jurisdiction of the Department of Human  
11 Services for the protection of residents, including  
12 appointment of on-site monitors or receivers, transfer or  
13 relocation of residents, and closure of units. The Inspector  
14 General may seek the assistance of the Attorney General or any  
15 of the several State's attorneys in imposing such sanctions.  
16 Whenever the Inspector General issues any recommendations to  
17 the Secretary of Human Services, the Secretary shall provide a  
18 written response.

19 (e) The Inspector General shall establish and conduct  
20 periodic training programs for Department of Human Services  
21 employees concerning the prevention and reporting of neglect  
22 and abuse.

23 (f) The Inspector General shall at all times be granted  
24 access to any mental health or developmental disabilities  
25 facility operated by the Department of Human Services, shall  
26 establish and conduct unannounced site visits to those

1 facilities at least once annually, and shall be granted access,  
2 for the purpose of investigating a report of abuse or neglect,  
3 to the records of the Department of Human Services and to any  
4 facility or program funded by the Department of Human Services  
5 that is subject under the provisions of this Section to  
6 investigation by the Inspector General for a report of abuse or  
7 neglect.

8 (g) Nothing in this Section shall limit investigations by  
9 the Department of Human Services that may otherwise be required  
10 by law or that may be necessary in that Department's capacity  
11 as the central administrative authority responsible for the  
12 operation of State mental health and developmental disability  
13 facilities.

14 (g-5) After notice and an opportunity for a hearing that is  
15 separate and distinct from the Office of the Inspector  
16 General's appeals process as implemented under subsection (c)  
17 of this Section, the Inspector General shall report to the  
18 Department of Public Health's nurse aide registry under Section  
19 3-206.01 of the Nursing Home Care Act the identity of  
20 individuals against whom there has been a substantiated finding  
21 of physical or sexual abuse or egregious neglect of a service  
22 recipient.

23 Nothing in this subsection shall diminish or impair the  
24 rights of a person who is a member of a collective bargaining  
25 unit pursuant to the Illinois Public Labor Relations Act or  
26 pursuant to any federal labor statute. An individual who is a

1 member of a collective bargaining unit as described above shall  
2 not be reported to the Department of Public Health's nurse aide  
3 registry until the exhaustion of that individual's grievance  
4 and arbitration rights, or until 3 months after the initiation  
5 of the grievance process, whichever occurs first, provided that  
6 the Department of Human Services' hearing under this subsection  
7 regarding the reporting of an individual to the Department of  
8 Public Health's nurse aide registry has concluded.  
9 Notwithstanding anything hereinafter or previously provided,  
10 if an action taken by an employer against an individual as a  
11 result of the circumstances that led to a finding of physical  
12 or sexual abuse or egregious neglect is later overturned under  
13 a grievance or arbitration procedure provided for in Section 8  
14 of the Illinois Public Labor Relations Act or under a  
15 collective bargaining agreement, the report must be removed  
16 from the registry.

17 The Department of Human Services shall promulgate or amend  
18 rules as necessary or appropriate to establish procedures for  
19 reporting to the registry, including the definition of  
20 egregious neglect, procedures for notice to the individual and  
21 victim, appeal and hearing procedures, and petition for removal  
22 of the report from the registry. The portion of the rules  
23 pertaining to hearings shall provide that, at the hearing, both  
24 parties may present written and oral evidence. The Department  
25 shall be required to establish by a preponderance of the  
26 evidence that the Office of the Inspector General's finding of

1 physical or sexual abuse or egregious neglect warrants  
2 reporting to the Department of Public Health's nurse aide  
3 registry under Section 3-206.01 of the Nursing Home Care Act.

4 Notice to the individual shall include a clear and concise  
5 statement of the grounds on which the report to the registry is  
6 based and notice of the opportunity for a hearing to contest  
7 the report. The Department of Human Services shall provide the  
8 notice by certified mail to the last known address of the  
9 individual. The notice shall give the individual an opportunity  
10 to contest the report in a hearing before the Department of  
11 Human Services or to submit a written response to the findings  
12 instead of requesting a hearing. If the individual does not  
13 request a hearing or if after notice and a hearing the  
14 Department of Human Services finds that the report is valid,  
15 the finding shall be included as part of the registry, as well  
16 as a brief statement from the reported individual if he or she  
17 chooses to make a statement. The Department of Public Health  
18 shall make available to the public information reported to the  
19 registry. In a case of inquiries concerning an individual  
20 listed in the registry, any information disclosed concerning a  
21 finding of abuse or neglect shall also include disclosure of  
22 the individual's brief statement in the registry relating to  
23 the reported finding or include a clear and accurate summary of  
24 the statement.

25 At any time after the report of the registry, an individual  
26 may petition the Department of Human Services for removal from

1 the registry of the finding against him or her. Upon receipt of  
2 such a petition, the Department of Human Services shall conduct  
3 an investigation and hearing on the petition. Upon completion  
4 of the investigation and hearing, the Department of Human  
5 Services shall report the removal of the finding to the  
6 registry unless the Department of Human Services determines  
7 that removal is not in the public interest.

8 (Source: P.A. 93-636, eff. 12-31-03; 94-428, eff. 8-2-05;  
9 94-853, eff. 6-13-06; 94-934, eff. 6-26-06; revised 8-3-06.)

10 Section 10. The Criminal Code of 1961 is amended by  
11 changing Section 26-1 as follows:

12 (720 ILCS 5/26-1) (from Ch. 38, par. 26-1)

13 Sec. 26-1. Elements of the Offense.

14 (a) A person commits disorderly conduct when he knowingly:

15 (1) Does any act in such unreasonable manner as to  
16 alarm or disturb another and to provoke a breach of the  
17 peace; or

18 (2) Transmits or causes to be transmitted in any manner  
19 to the fire department of any city, town, village or fire  
20 protection district a false alarm of fire, knowing at the  
21 time of such transmission that there is no reasonable  
22 ground for believing that such fire exists; or

23 (3) Transmits or causes to be transmitted in any manner  
24 to another a false alarm to the effect that a bomb or other

1 explosive of any nature or a container holding poison gas,  
2 a deadly biological or chemical contaminant, or  
3 radioactive substance is concealed in such place that its  
4 explosion or release would endanger human life, knowing at  
5 the time of such transmission that there is no reasonable  
6 ground for believing that such bomb, explosive or a  
7 container holding poison gas, a deadly biological or  
8 chemical contaminant, or radioactive substance is  
9 concealed in such place; or

10 (4) Transmits or causes to be transmitted in any manner  
11 to any peace officer, public officer or public employee a  
12 report to the effect that an offense will be committed, is  
13 being committed, or has been committed, knowing at the time  
14 of such transmission that there is no reasonable ground for  
15 believing that such an offense will be committed, is being  
16 committed, or has been committed; or

17 (5) Enters upon the property of another and for a lewd  
18 or unlawful purpose deliberately looks into a dwelling on  
19 the property through any window or other opening in it; or

20 (6) While acting as a collection agency as defined in  
21 the "Collection Agency Act" or as an employee of such  
22 collection agency, and while attempting to collect an  
23 alleged debt, makes a telephone call to the alleged debtor  
24 which is designed to harass, annoy or intimidate the  
25 alleged debtor; or

26 (7) Transmits or causes to be transmitted a false

1 report to the Department of Children and Family Services  
2 under Section 4 of the "Abused and Neglected Child  
3 Reporting Act"; or

4 (8) Transmits or causes to be transmitted a false  
5 report to the Department of Public Health under the Nursing  
6 Home Care Act; or

7 (9) Transmits or causes to be transmitted in any manner  
8 to the police department or fire department of any  
9 municipality or fire protection district, or any privately  
10 owned and operated ambulance service, a false request for  
11 an ambulance, emergency medical technician-ambulance or  
12 emergency medical technician-paramedic knowing at the time  
13 there is no reasonable ground for believing that such  
14 assistance is required; or

15 (10) Transmits or causes to be transmitted a false  
16 report under Article II of "An Act in relation to victims  
17 of violence and abuse", approved September 16, 1984, as  
18 amended; or

19 (11) Transmits or causes to be transmitted a false  
20 report to any public safety agency without the reasonable  
21 grounds necessary to believe that transmitting such a  
22 report is necessary for the safety and welfare of the  
23 public; or

24 (12) Calls the number "911" for the purpose of making  
25 or transmitting a false alarm or complaint and reporting  
26 information when, at the time the call or transmission is

1 made, the person knows there is no reasonable ground for  
2 making the call or transmission and further knows that the  
3 call or transmission could result in the emergency response  
4 of any public safety agency; or -

5 (13) Transmits or causes to be transmitted a false  
6 report to the Department of Human Services Office of the  
7 Inspector General Hotline under subsection (a) of Section  
8 6.2 of the Abused and Neglected Long Term Care Facility  
9 Residents Reporting Act.

10 (b) Sentence. A violation of subsection (a)(1) of this  
11 Section is a Class C misdemeanor. A violation of subsection  
12 (a)(5), (a)(11), or (a)(12) of this Section is a Class A  
13 misdemeanor. A violation of subsection (a)(8), ~~or~~ (a)(10), or  
14 (a)(13) of this Section is a Class B misdemeanor. A violation  
15 of subsection (a)(2), (a)(4), (a)(7), or (a)(9) of this  
16 Section, or a second or subsequent violation of subsection  
17 (a)(13) of this Section, is a Class 4 felony. A violation of  
18 subsection (a)(3) of this Section is a Class 3 felony, for  
19 which a fine of not less than \$3,000 and no more than \$10,000  
20 shall be assessed in addition to any other penalty imposed.

21 A violation of subsection (a)(6) of this Section is a  
22 Business Offense and shall be punished by a fine not to exceed  
23 \$3,000. A second or subsequent violation of subsection (a)(7),  
24 (a)(11), or (a)(12) of this Section is a Class 4 felony. A  
25 third or subsequent violation of subsection (a)(5) of this  
26 Section is a Class 4 felony.

1           (c) In addition to any other sentence that may be imposed,  
2 a court shall order any person convicted of disorderly conduct  
3 to perform community service for not less than 30 and not more  
4 than 120 hours, if community service is available in the  
5 jurisdiction and is funded and approved by the county board of  
6 the county where the offense was committed. In addition,  
7 whenever any person is placed on supervision for an alleged  
8 offense under this Section, the supervision shall be  
9 conditioned upon the performance of the community service.

10           This subsection does not apply when the court imposes a  
11 sentence of incarceration.

12           (Source: P.A. 92-16, eff. 6-28-01; 92-502, eff. 12-19-01;  
13 93-431, eff. 8-5-03.)

14           Section 99. Effective date. This Act takes effect upon  
15 becoming law.